

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK _____X

Docket No.: 1:17-cv-09260 (RWS)

KADIAN NOBLE,

Plaintiff,

- vs -

HARVEY WEINSTEIN, THE WEINSTEIN
COMPANY, and BOB WEINSTEIN,

Defendants.

**PLAINTIFF’S MEMORANDUM
IN RESPONSE TO MOTIONS
TO DISMISS THE COMPLAINT
OF DEFENDANTS HARVEY
WEINSTEIN AND THE
WEINSTEIN COMPANY**

X

Plaintiff, KADIAN NOBLE, by and through her undersigned counsel, hereby files this Memorandum in Response to Motions to Dismiss of Defendants Harvey Weinstein and The Weinstein Company, pursuant to S.D.N.Y. Local Rule 7.1(b), as follows:

1. Defendants Harvey Weinstein and The Weinstein Company each filed Motions to Dismiss the original Complaint on January 30, 2018. (DE 36, 39). In response to the Defendant’s Rule 12(b)(6) Motion, Plaintiff intends to file an Amended Complaint on or before February 20, 2018. This Amended Complaint will be filed “as a matter of course” within 21 days of the filing of the Motions to Dismiss, in accordance with Fed. R. Civ. P. 15(a)(1)(B).

2. The filing of the Amended Complaint will render the Motions to Dismiss filed by Defendants Harvey Weinstein and The Weinstein Company moot: “It is well established that an amended complaint ordinarily supersedes the original and renders it of no legal effect.” *Dluhos v. Floating & Abandoned Vessel*, 162 F. 3d 63, 68 (2d Cir. 1998); *Int’l Controls Corp. v. Vesco*, 556 F. 2d 665, 668 (2d Cir. 1977) (same); accord *Allstate Ins Co. v. Yadgarov*, No. 11 Civ. 6187, 2014 U.S. Dist. LEXIS 3068 *13 (E.D.N.Y. February 10, 2014).

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3. The Amended Complaint that Plaintiff's counsel is preparing and intends to file will address Defendants' arguments that the Complaint fails to provide sufficient factual details for the elements of sex trafficking under 18 U.S.C. §1591. Additionally, the Verified Petition filed on or about February 11, 2018 by Eric Schneiderman, Attorney General of the State of New York, and made public record, contains detailed allegations of fact against the Defendants in this case, which facts are germane to the Plaintiff's allegations concerning notice, intent and participation in the commercial sex act venture.¹ The facts set forth in that Petition are based on the Attorney General's extensive investigation of the Defendants, including witness interviews and review of documents that are not yet available to Plaintiffs in discovery. Plaintiff intends to incorporate facts stated in the Attorney General's Petition within her Amended Complaint in this case. Plaintiff also intends to add claims and Defendants in her Amended Complaint.

4. Given the changes to be made in the Complaint, any motion practice under Fed. R. Civ. P. 12(b)(6) should necessarily address the amended pleading. *See* Fed. R. Civ. P. 15, 2009 Committee Notes ("[a] responsive amendment may avoid the need to decide the motion or reduce the number of issues to be decided, and will expedite determination of issues that otherwise might be raised seriatim. It also should advance other pretrial proceedings.")

WHEREFORE, Plaintiff respectfully requests that Motions to Dismiss of Defendants Harvey Weinstein and The Weinstein Company be denied as moot, upon the filing of Plaintiff's Amended Complaint.

¹ While the claims made by the Attorney General are different from those made in this civil case, they arise out of the same acts and occurrences and similarly allege a pattern of illegal activity designed for Harvey Weinstein to engage in sex acts with aspiring actresses.

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Dated: Boca Raton, FL
February 13, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing to:

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/s/ Stuart S. Mermelstein